IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

GUARDIANSHIP PETITION NO.92 OF 2007

Anand Yashwant Sarwade ....Petitioner

Mr.Sanjay M. Danbre for the Petitioner.

Ms.Alpana Ghone and Mrs.Sowmya Srikrishna as Amicus Curie.

CORAM : S.J. VAZIFDAR, J.
DATED : 5TH DECEMBER, 2007.

ORAL JUDGMENT :

1. This is a Petition under the Guardians and Wards Act, 1890. The Petitioner seeks to be appointed the guardian of his brother one Dada Yashwant Sarwade inter-alia in respect of certain amounts due to him from the gratuity and family pension account of their deceased father. Their mother expired on 14.5.2002 leaving behind the Petitioner and the said Sarwade as the only legal heirs and representatives.

2. The Petitioner's case is that his brother in respect of whom he seeks to be appointed as a guardian is mentally ill and that after the death of their parents he has been residing continuously with him and that he has been looking after him in all respects.

3. The said Sarwade is however admittedly a major being over the age of eighteen years.

4. Though the provisions of the Act are clear, I requested Ms.Alpana Ghone and Mrs.Sowmya Srikrishna to appear as amicus curie as there was no opposition to this Petition. I must express my appreciation for the valuable assistance rendered by them.

5. Mrs.Srikrishna submitted that in view of the fact that the said Sarwade is a major and in view of the fact that the petition is based on the premise that he is mentally ill, the petition is not maintainable under the Guardians and Wards Act, 1890. The Act empowers the Court to appoint a guardian only in respect of a minor. The submission is well founded.

6. Mrs.Srikrishna invited my attention to Sections 4, 7 and 41 of the Act. Section 4(1) of the said Act defines a minor to be a person, who under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority.

Section 4(3) defines "wards" to mean a minor for whose person or property or both there is a guardian.

7. Section 7 of the said Act reads as under :-

> **"7. Power of the Court to make order as to guardianship -** (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made -
>
> (a) appointing a guardian of his person or property or both, or
>
> (b) declaring a person to be such a guardian
>
> the Court may make an order accordingly.
>
> (2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.
>
> (3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act."

Section 7 therefore makes it clear that the Court can appoint a guardian under the said Act only in respect of a minor.

8. There is no provision in the Act that

empowers the Court to appoint a guardian in respect of a person other than a minor. The doubt, if any, is cleared by Section 41(1)(c) which provides that the powers of a guardian of a person cease on the ward ceasing to be a minor.

9. Assuming that the said Sarwade is a mentally ill person the remedy would be under the Mental Health Act, 1987 and not under the Guardians and Wards Act, 1890.

10. The petition is therefore dismissed with liberty to the Petitioner to adopt appropriate proceedings.